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WORKMEN'S COMPENSATION ACT

OF THE

TERRITORY OF HAWAII

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ACT 221

AN ACT

RELATING TO COMPENSATION TO EMPLOYEES FOR PERSONAL INJURIES SUSTAINED IN THE COURSE OF THEIR EMPLOYMENT.

Be it Enacted by the Legislature of the Territory of Hawaii:

I.

RIGHTS AND REMEDIES GRANTED AND AFFECTED.

EMPLOYMENTS COVERED.

SECTION 1. This Act shall apply to any and all industrial employment, as hereinafter defined. If a workman receives personal injury by accident arising out of and in the course of such employment, his employer or the insurance carrier shall pay compensation in the amounts and to the person or persons hereinafter specified.

TERRITORIAL AND MUNICIPAL BODIES.

SECTION 2. This Act shall apply to employees (other than officials as hereinafter defined) of the Territory, and all counties, and all other political subdivisions within the Territory now existing or which may hereafter be created.

INJURIES NOT COVERED.

SECTION 3. No compensation shall be allowed for an injury caused (1) by the employee's wilful intention to injure himself or to injure another, or (2) by his intoxication. If the employer claims an exemption or forfeiture under this section the burden of proof shall be upon him.

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Right to Compensation Exclusive.

Section 4. The rights and remedies herein granted to an employee on account of a personal injury for which he is entitled to compensation under this Act shall exclude all other rights and remedies of such employee, his personal representatives, dependents, or next of kin, at common law or otherwise, on account of such injury.

Employers, who hire workmen within this Territory to work outside of the Territory, may agree with such workmen that the remedies under this Act shall be exclusive as regards injuries received outside this Territory by accident arising out of and in the course of such employment; and all contracts of hiring in this Territory shall be presumed to include such an agreement.

Liability of Third Persons.

Section 5. When any injury for which compensation is payable under this Act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim compensation under this Act or obtain damages from or proceed at law against such other person to recover damages; and if compensation is claimed and awarded under this Act any employer having paid the compensation or having become liable therefor shall be subrogated to the rights of the injured employee to recover against that person, provided, if the employer shall recover from such other person damages in excess of the compensation already paid or awarded to be paid under this Act, then any such excess shall be paid to the injured employee less the employer's expenses and costs of action.

Contracting out Forbidden.

Section 6. No contract, rule, regulation, or device whatsoever shall operate to relieve the employer in whole or in part from any liability created by this Act.

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II.

COMPENSATION.

Death Benefits.

Section 7. If death results from the injury within six months, the employer or the insurance carrier shall pay to the persons entitled to compensation or, if there be none, then to the personal representative of the deceased employee, burial expenses not to exceed one hundred dollars ($100.00); and shall also pay to or for the following persons for the following periods a weekly compensation equal to the following percentages of the deceased employee's average weekly wages as defined in Section 15;

(a) To the dependent widow or widower, if there be no dependent children, forty per cent.

(b) To the dependent widow or widower, if there be one or two dependent children, fifty per cent., or if there be three or more dependent children, sixty per cent. Such compensation to the widow or widower shall be for the use and benefit of such widow or widower and of the dependent children, and the industrial accident board may from time to time apportion such compensation between them in such way as it deems best.

(c) If there be no dependent widow or widower, but a dependent child or children, then to such child or children thirty per cent., with ten per cent. additional for each child in excess of two, with a maximum of fifty per cent., to be divided equally among such children if more than one.

(d) If there be neither dependent widow, widower, nor child, but there be a dependent father or mother, then to such parent, if wholly dependent forty per cent., or if partially dependent twenty-five per cent., or if both parents be dependent then one-half of the foregoing compensation to each of them; or, if there be no such parents, but a dependent grandparent, then to every such grandparent the same compensation as to a parent.

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(e) If there be neither dependent widow, widower, child, parent, or grandparent, but there be a dependent grandchild, brother, or sister, or two or more of them, then to such dependents twenty-five per cent. for one such dependent and five per cent. additional for each additional such dependent, with a maximum of forty per cent., to be divided equally among such dependents if more than one.

Dependents.

Section 8. The following persons, and they only, shall be deemed dependents and entitled to compensation under the provisions of this Act;

A child if under sixteen years of age, or incapable of self-support and unmarried, whether ever actually dependent upon the deceased or not;

The widow only if living with the deceased, or actually dependent, wholly or partially, upon him;

The widower only if incapable of self-support and actually dependent, wholly or partially, upon the deceased at the time of her injury;

A parent or grandparent only if actually dependent, wholly or partially, upon the deceased;

A grandchild, brother, or sister only if under sixteen years of age, or incapable of self-support, and wholly dependent upon the deceased. The relation of dependency must exist at the time of the injury.

An alien shall not be considered a dependent within the meaning of this Act unless actually residing within the United States, and any alien dependent leaving the United States shall thereupon lose all right to any benefits under this Act.

Periods of Compensation.

Section 9. The compensation herein provided for shall be payable during the following periods:

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To a widow, until death or remarriage, but in no case to exceed three hundred and twelve weeks;

To a widower, during disability or until remarriage, but in no case to exceed three hundred and twelve weeks;

To or for a child, until sixteen years of age, but in the case of a child incapable of self-support and unmarried as long as so incapable, but in no case to exceed one hundred and four weeks beyond said age of sixteen years;

To a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed three hundred and twelve weeks;

To or for a grandchild, brother, or sister, during dependency as hereinbefore defined, but in no case to exceed three hundred and twelve weeks.

Upon the cessation of compensation under this section to or on account of any person, the compensation of the remaining persons entitled to compensation for the unexpired part of the period during which their compensation is payable shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedent's death.

Certain Words Defined.

Section 10. As used in this section the term "child" includes step-children, adopted children, posthumous children, and illegitimate children, acknowledged previous to the injury, but does not include married children unless dependent. The terms "brother" and "sister" include step-brothers and step-sisters, half-brothers and half-sisters, and brothers and sisters by adoption, but do not include married brothers nor married sisters unless dependent. The term "grandchild" includes children of adopted children and children of step-children, but does not include step-children of children, step-children of step-children, step-children of adopted children, nor married grandchildren unless dependent. The term "parent" includes step-parents and parents by adoption. The term "grandparent"

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includes parents of parents by adoption, but does not include parents of step-parents, step-parents of parents, nor step-parents of step-parents.

Sundry Provisions as to Death Benefits.

Section 11. In computing death benefits the average weekly wages of the deceased employee shall be considered not to be more than thirty-six dollars ($36.00), nor less than five dollars ($5.00); but the total weekly compensation shall not exceed in any case the average weekly wages computed as provided in Section 15, nor shall the amount of compensation paid in any case exceed in the aggregate the sum of five thousand dollars ($5,000.00).

Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependent shall protect and discharge the employer unless and until such dependent or dependents prior in right shall have given him notice of his or their claim. In case the employer is in doubt as to the respective rights of rival claimants he may apply to the industrial accident board to decide between them.

In case death occurs after a period of disability, either total or partial, the period of disability shall be deducted from the total periods of compensation respectively stated in Section 9.

The compensation of a person who is insane shall be paid to his or her guardian.

Medical Attendance.

Section 12. During the first fourteen days of disability the employer shall furnish reasonable surgical, medical and hospital services and supplies not exceeding the amount of fifty dollars ($50.00). The pecuniary liability of the employer for the medical, surgical and hospital service herein required shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person.

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Total Disability.

Section 13. Where the injury causes total disability for work the employer during such disability, but not including the first fourteen days thereof, shall pay the injured employee a weekly compensation equal to sixty per cent. of his average weekly wages, but not more than eighteen dollars ($18.00) nor less than three dollars ($3.00) a week. In no case shall the weekly payments continue after the disability ends, nor longer than three hundred and twelve weeks, nor shall the amount of compensation paid in any case exceed in the aggregate the sum of five thousand dollars ($5,000.00).

In case of an employee whose average weekly wages are less than three dollars ($3.00) a week the weekly compensation shall be the full amount of such average weekly wages, but where the disability is permanent the weekly compensation in such cases shall be three dollars ($3.00). In case the total disability begins after a period of partial disability, the period of partial disability shall be deducted from such total period of three hundred and twelve weeks.

In the case of the following injuries the disability caused thereby shall be deemed total and permanent, to wit:

(1) The total and permanent loss of sight in both eyes;

(2) The loss of both feet at or above the ankle;

(3) The loss of both hands at or above the wrist;

(4) The loss of one hand and one foot;

(5) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms or of one leg or of one arm;

(6) An injury to the skull resulting in incurable imbecility or insanity.

The above enumeration is not to be taken as exclusive.

Partial Disability.

Section 14. Where the injury causes partial disability for work, the employer, during such disability and for a period of

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three hundred and twelve weeks beginning on the 15th day of disability, shall pay the injured workman a weekly compensation equal to fifty per cent. of the difference between his average weekly wages before the accident and the weekly wages he is most probably able to earn thereafter, but not more than twelve dollars ($12.00) a week. In no case shall the weekly payments continue after the disability ends, and in case the partial disability begins after a period of total disability the period of total disability shall be deducted from such total period of three hundred and twelve weeks, nor shall the amount of compensation paid in any case exceed in the aggregate the sum of five thousand dollars ($5,000.00).

In case of the following injuries the compensation shall be fifty per cent. of the average weekly wages, but not more than twelve dollars ($12.00) to be paid weekly for the period stated against such injuries respectively, to wit:

(1) The loss by separation of one arm at or above the elbow joint, or the permanent and complete loss of the use of one arm, three hundred and twelve weeks;

(2) The permanent and complete loss of hearing in both ears, three hundred and twelve weeks;

(3) The loss by separation of one leg at or above the knee joint, or the permanent and complete loss of the use of one leg, two hundred and eighty-six weeks;

(4) The loss by separation of one hand at or above the wrist joint, or the permanent and complete loss of the use of one hand, two hundred and forty-eight weeks;

(5) The loss by separation of one foot at or above the ankle joint, or the permanent and complete loss of the use of one foot, two hundred and eight weeks.

Computation of Wages.

Section 15. Average weekly wages shall be computed in such a manner as is best calculated to give the average weekly earnings of the workman during the twelve months preceding

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his injury; provided, that where, by reason of the shortness of the time during which the workman has been in the employment, or the casual nature of the employment, or the terms of the employment, it is impracticable to compute the rate of remuneration, regard may be had to the average weekly earnings, which, during the twelve months previous to the injury, were being earned by a person in the same grade employed at the same work by the employer of the injured workman, or if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

If a workman at the time of the injury is regularly employed in a higher grade of work than formerly during the year and with larger regular wages, only such larger wages shall be taken into consideration in computing his average weekly wages.

Voluntary Payments.

Section 16. Any payments made by the employer or his insurer to the injured workman during the period of his disability, or to his dependents, which, by the terms of this Act, were not due and payable when made, may, subject to the approval of the board, be deducted from the amount to be paid as compensation; provided, that in case of disability such deduction shall be made by shortening the period during which compensation must be paid, and not by reducing the amount of the weekly payments under Sections 13 and 14.

Periodical Payments.

Section 17. The board, upon the application of either party, may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly.

Commutation of Payments.

Section 18. Whenever the board determines that it is for the best interest of all parties, the liability of the employer for

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compensation may, on application to the board by any party interested, be discharged in whole or in part by the payment of one or more lump sums to be fixed by the board.

Trustee in Case of Lump Sum Payments.

Section 19. Whenever for any reason the board deems it expedient, any lump sum which is to be paid as provided in Section 18 shall be paid by the employer to some suitable person or corporation appointed by the circuit court in the jurisdiction of which the injury occurred as trustee to administer or apply the same for the benefit of the person or persons entitled thereto in the manner provided by the board. The receipt of such trustee for the amount so paid shall discharge the employer or any one else who is liable therefor.

III.

PROCEDURE IN OBTAINING COMPENSATION.

Medical Examination.

Section 20. After an injury and during the period of disability, the workman, whenever ordered by the board, shall submit himself to examination, at reasonable times and places, to a duly qualified physician or surgeon designated and paid by the employer. The workman shall have the right to have a physician or surgeon designated and paid by himself present at such examination, which right, however, shall not be construed to deny to the employer's physician the right to visit the injured workman at all reasonable times and under all reasonable conditions during total disability. If a workman refuses to submit himself to or in any way obstructs such examination, his right to take or prosecute any proceeding under this Act shall be suspended until such refusal or obstruction ceases, and no compensation shall be payable for the period during which such refusal or obstruction continues.

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Notice of Injury and Claim for Compensation.

Section 21. No proceedings under this Act for compensation for an injury shall be maintained unless a notice of the injury shall have been given to the employer as soon as practicable after the happening thereof, and unless a claim for compensation with respect to such injury shall have been made within three months after the date of the injury; or, in case of death, then within three months after such death, whether or not a claim had been made by the employee himself for compensation. Such notice and such claim may be given or made by any person claiming to be entitled to compensation or by some one on his behalf. If payments of compensation have been made voluntarily the making of a claim within said period shall not be required.

Form of Notice and Claim.

Section 22. Such notice and such claim shall be made in writing, and such notice shall contain the name and address of the employee, and shall state in ordinary language the time, place, nature, and cause of the injury, and shall be signed by him or by a person an his behalf, or, in the event of his death, by any one or more of his dependents or by a person on their behalf. The notice may include the claim.

Giving of Notice and Making of Claim.

Section 23. Any notice under this Act shall be given to the employer, or if the employer be a partnership, then to any one of the partners. If the employer be a corporation, then the notice may be given to any agent of the corporation upon whom process may be served, or to any officer of the corporation, or any agent in charge of the business at the place where the injury occurred. Such notice shall be given by delivering it or by sending it by mail by registered letter addressed to the employer at his or its last known residence or place of business. The foregoing provisions shall apply to the making of a claim.

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Sufficiency of Notice.

Section 24. A notice given under the provisions of Section 21 of this Act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature, or cause of the injury, or otherwise, unless it is shown that the employer was in fact misled to his injury thereby. Want of notice or delay in giving notice shall not be a bar to proceedings under this Act if it be shown that the employer, his agent or representative, had knowledge of the accident or that the employer has not been prejudiced by such delay or want of notice.

Limitation of Time as Regards Minors and Insane.

Section 25. No limitation of time provided in this Act shall run as against any person who is mentally incompetent or a minor dependent so long as he has no guardian, or next friend.

IV.

INDUSTRIAL ACCIDENT BOARD.

Creation of Board.

Section 26. There shall be a board created, to be known as the Industrial Accident Board, in each county, consisting of five members to be appointed by the governor, as provided by Section 80 of the Organic Act. Each board shall elect its own chairman. Members of the boards shall hold office for five years except that when the boards are first constituted one member for each board shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter one member shall be appointed to each board every year for the full term of five years. Outgoing members shall be eligible for reappointment.

It shall be the duty of the county or city and county attorney, as the case may be, to act as attorney for the board in all matters coming before the board whenever requested to so act.

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Jurisdiction.

Section 27. Each board shall have jurisdiction over the injuries occurring within the county for which it is appointed, or occurring to employees of residents of the county while such employees are without the Territory, or on vessels operated by residents of such county; provided, that if the principal business or occupation of the employer concerned or of the owner of the vessel is carried on in another county, the board of such other county shall have such jurisdiction.

Salaries and Expenses.

Section 28. The members of such boards shall serve without remuneration, except that they may be allowed their reasonable travelling and other expenses while proceeding to, attending, and returning from attendance of meetings of the board, or reasonably incurred in the discharge of their duties, which board may employ such assistance and clerical help as it may deem necessary, and fix the compensation of all persons so employed. All such salaries and expenses shall be paid out of such funds as shall be appropriated by the Legislature for the use of such boards.

Rules of Board, Witnesses, Blanks.

Section 29. (1) rules Each board may make rules not inconsistent with this Act for carrying out the provisions of this Act. (2) simple procedure Process and procedure under this Act shall be as summary and simple as reasonably may be. The board, (3) judicial powers or any member thereof, shall have the power to subpoena witnesses, administer oaths, and to examine such of the books and records of the parties to a proceeding as relate to the questions in dispute. (4) enforcement by courts The circuit court shall have power to enforce by proper proceedings the attendance and testimony of witnesses, and the production and examination of books, papers, and records. The board shall cause to be printed and furnished free of charge to any employer or employee such blank forms as it shall deem requisite to

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facilitate or promote the efficient administration of this Act. Such blanks shall also be furnished by the board to the clerk of the circuit court who shall furnish the same to any employer or employee free of charge, but subject, however, to any rules and regulations the board shall make relating thereto.

Agreements.

Section 30. If the employer and the injured employee reach an agreement in regard to compensation under this Act, a memorandum of the agreement shall be filed with the board and, if approved by it, thereupon the memorandum shall for all purposes be enforceable under the provisions of Section 39, unless modified as provided in Section 37.

Such agreements shall be approved by the board only when the terms conform to the provisions of this Act.

Committee of Arbitration.

Section 31. If the compensation is not settled by agreement, either party may make an application to the board for the formation of a committee of arbitration. Such committee shall consist of three members, one of whom shall be a member of the industrial accident board, or appointed by it, who shall act as chairman. The other two members shall be named, respectively, by the parties. If a vacancy occurs it shall be filled in the same way as the original appointment.

Formation of Committee.

Section 32. Immediately after such application the board shall designate one of its members, or a substitute, to act as chairman of the committee of arbitration, and shall request the parties to appoint their respective representatives. If within seven days after such request, or after a vacancy has occurred, either party does not appoint his representative the board shall fill the vacancy and notify the parties to that effect.

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Hearings and Awards.

Section 33. The committee on arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee, unless otherwise agreed, shall be held in the city or town where the injury occurred if within this Territory, and the award of the committee, together with a statement of its findings of fact, rulings of law, and any other matters pertinent to the question arising before it, shall be filed with the industrial accident board of the respective county. A copy of the award shall be immediately sent to the parties. Unless a claim for a review is filed by either party within ten days after the sending of the award, it shall be enforceable under the provisions of Section 39.

Examination by Physician.

Section 34. Each industrial accident board, or any member thereof, may appoint a duly qualified impartial physician to examine the injured employee and to report. The fee for this service shall be three dollars ($3.00) and travelling expenses, but the board may allow additional reasonable amounts in extraordinary cases.

Expenses of Arbitration and Physicians.

Section 35. The fees and expenses of arbitrators under Section 33 and of physicians under Section 34 shall be paid from the funds appropriated by the Legislature for the use of the respective boards.

Review of Award.

Section 36. If an application for review is made to any board, or if the committee fails to make an award within thirty days after its formation, the board shall allow a full trial and shall make an award which shall be filed with the record of proceedings and shall state its conclusions of fact and rulings of law, and shall immediately send to the parties a copy of the award.

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Modification of Awards and Agreements.

Section 37. On the application of any party on the ground of a change of conditions, the board may at any time, but not oftener than once in six months, review any agreement or award, and on such review may make an award ending, diminishing, or increasing the compensation previously agreed upon or awarded subject to the maximum and minimum provided in this Act, and shall state its conclusions of fact and rulings of law, and immediately send to the parties a copy of the award, but this section shall not apply to a commutation of payments under Section 18.

Appeals from Board.

Section 38. An award of the board, in the absence of fraud shall be final and conclusive between the parties except as provided in Section 37, unless within ten days after a copy has been sent to the parties either party appeals to the circuit court of the circuit in which said board is located. In the County of Hawaii the circuit court shall be that of the fourth circuit. In case of every such appeal the right of a trial by jury shall be deemed to be waived unless claimed within ten days from the date such appeal is entered. Said court may by proper rules prescribe the procedure to be followed in the case of such appeals.

The board may certify questions of law to the supreme court of the Territory for its determination.

Enforcement of Award.

Section 39. Any party in interest may file in the circuit court in the jurisdiction of which the injury occurred a certified copy of a decision of the board awarding compensation, from which no appeal has been taken within the time allowed therefor or a certified copy of a decision of an arbitration committee awarding compensation from which no claim for review has been filed within the time allowed therefor, or a certified copy of a memorandum of agreement approved by the board, where-

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upon said court shall render a decree or judgment in accordance therewith and notify the parties thereof. Such decree or judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said decree or judgment had been rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom.

Costs.

Section 40. If the committee of arbitration, industrial accident board, or any court before whom any proceedings are brought under this Act, determines that such proceedings have been brought, prosecuted, or defended without reasonable ground it may assess the whole cost of the proceedings upon the party who has so brought, prosecuted, or defended them.

General Powers of Board.

Section 41. All questions arising under this Act, if not settled by agreement of the parties interested therein with the approval of the board, shall, except as otherwise herein provided, be determined by the board. The decisions of the board shall be enforceable by the circuit court under the provisions of Section 39. There shall be a right of appeal from decisions of the board to the circuit court as provided in Section 38, but in no case shall such an appeal, either under this section or under Section 38, operate as a supersedeas or stay unless the board or the circuit court shall so order.

Revision Decrees.

Section 42. The circuit court, upon the filing with it of a certified copy of a decision of the industrial accident board ending, diminishing, or increasing compensation previously awarded, shall revoke or modify its prior decree or judgment so that it will conform to said decision.

Injuries Outside the Territory.

Section 43. If a workman who has been hired in this Territory receives personal injury by accident arising out of

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and in the course of such employment, he shall be entitled to compensation according to the law of this Territory even though such injury was received outside this Territory.

If a workman who has been hired outside of this Territory is injured while engaged in his employer's business, and is entitled to compensation for such injury under the law of the state or territory where he was hired, he shall be entitled to enforce against his employer his rights in this Territory if his rights are such that they can reasonably be determined and dealt with by the board and the court in this Territory.

V.

PREFERENCES AND ASSIGNMENTS.

Preferences.

Section 44. All rights of compensation granted by this Act shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

Assignments. Attorneys' Fees.

Section 45. No claims for compensation under this Act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors. Claims of attorneys and of physicians for services under this Act shall be subject to the approval of the board.

VI.

SECURITY FOR COMPENSATION.

Security for Payment of Compensation.

Section 46. Employers, but not including the territorial or the municipal bodies mentioned in Section 2, shall secure compensation to their employees in one of the following ways:

(1) By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association

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authorized to transact the business of workmen's compensation insurance in this Territory, or

(2) By obtaining and keeping in force guarantee insurance with any company authorized to do such guarantee business within the Territory, or

(3) By depositing and maintaining with the territorial treasurer security satisfactory to the board securing the payment by said employer of compensation according to the terms of this Act.

(4) Upon furnishing satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits herein provided, no insurance or security shall be required, and the employer shall make such payments directly to his employees, as they may become entitled to receive the same under the terms and conditions of this Act.

Any person who wilfully misrepresents any fact in order to obtain the benefits of this section shall be guilty of a misdemeanor.

Any decision of the board rendered under the provisions of subdivisions 3 and 4 of this section with respect to the amount of security required or refusing to permit no security to be given shall be subject to review on appeal by the circuit court in like manner as appeals are permitted under Section 38 of this Act.

Notice of Insurance.

Section 47. If the insurance so effected is not under subdivisions 3 or 4 of Section 46 the employer shall forthwith file with the territorial treasurer and with the board in form prescribed by the board a notice of his insurance, together with a copy of the contract or policy of insurance.

Effect of Failure to Secure Compensation.

Section 48. If an employer fails to comply with the provisions of Section 46 he shall be liable to a penalty for every day during which such failure continues, of one dollar ($1.00)

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for every employee, to be recovered in an action brought by the chairman of the board in the name of the Territory, and the amounts so collected shall be paid into the territorial treasury and be a special fund for the use of the board. It shall be the duty of the county attorney of each county to prosecute such suits, if so requested by the board.

The board may, however, in its discretion, for good cause shown, remit any such penalty in whole or in part, provided the employer in default forthwith secures compensation as provided in Section 46.

Furthermore, if any employer shall be in default under Section 46, for a period of thirty days, he may be enjoined by the circuit court from carrying on his business while such default continues.

The Insurance Contract.

Section 49. Every policy of insurance and every guarantee contract covering the liability of the employer for compensation, whether issued by a stock company, or by a mutual association authorized to transact workmen's compensation or guarantee insurance in this Territory shall cover the entire liability of the employer to his employees covered by the policy or contract, and also shall contain a provision setting forth the right of the employees to enforce in their own names either by at any time filing a separate claim or by at any time making the insurance carrier a party to the original claim, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided however that payment in whole or in part of such compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

Knowledge of Employer to Affect Insurance Carrier.

Section 50. Every such policy and contract shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the in-

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jury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this Act, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions, or awards rendered against the employer for the payment of compensation under the provisions of this Act.

Insolvency of Employer Not to Release Insurance Carrier.

Section 51. Every such policy and contract shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the insurance carrier from the payment of compensation for injuries or death sustained by an employee during the life of such policy or contract.

Cancellation of Insurance Contracts.

Section 52. No policy or contract of insurance or guaranty issued by a stock company or mutual association against liability arising under this Act shall be cancelled within the time limited in such contract for its expiration until at least ten days after notice of intention to cancel such contract, on a date specified in such notice, shall have been filed in the office of the territorial treasurer and also served on the board and the employer.

Insurance by the Territory, Counties and Municipalities.

Section 53. The Territory, and each county, and any other political subdivision of the Territory, which is liable to its employees for compensation may insure with any authorized insurance carrier.

Employees not to Pay for Insurance.

Section 54. No agreement by an employee to pay any portion of the premium paid by his employer to contribute to a

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benefit fund or department maintained by such employer, or to the cost of mutual or other insurance maintained for or carried for the purpose of securing compensation as herein required shall be valid; and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this Act shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not to exceed two hundred and fifty dollars ($250.00).

Inspections.

Section 55. The board shall have the right to inspect the plants and establishments of all employers in the Territory and the inspectors designated by the board shall have free access to such premises during regular working hours, and at other reasonable times.

VII.

REPORTS, DEFINITIONS, AND GENERAL PROVISIONS.

Report of Accidents by Employers.

Section 56. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment, when known to him or brought to his attention. As soon as practicable after the occurrence of an injury causing absence from work for one day or more, a report thereof shall be made in writing by the employer to the board on blanks to be procured from the board for the purpose.

Upon the termination of the disability of the injured employee, the employer shall make a supplemental report upon blanks to be procured from the board for that purpose. If the disability extends beyond a period of sixty days, the employer shall report to the board at the end of such period that the injured employee is still disabled, and upon the termination of the disability shall file a final supplemental report as provided above.

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The said reports shall contain the name and nature of the business of the employer, the situation of the establishment, the name, age, sex, wages, and occupation of the injured employee, and shall state the date and hour of the accident causing the injury, the nature and cause of the injury, and such other information as may be required by the board.

Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than twenty-five dollars ($25.00) for each offense.

Within sixty days after the termination of the disability of the injured employee, the employer or other party liable to pay the compensation provided for by this Act shall file with the board a statement showing the total payments made or to be made for compensation and for medical services for such injured employee.

Interstate Commerce.

Section 57. This Act shall affect the liability of employers to employees engaged in interstate or foreign commerce or otherwise only so far as the same is permissible under the laws of the United States.

Reports of Industrial Accident Boards.

Section 58. Annually on or before the first day of February, the board of each county shall make a report to the governor which shall be transmitted to the legislature and which shall include a properly classified statement of the expenses of the board together with any other matters which the board deems proper to report, including any recommendations it may desire to make.

Section 59. Whenever under this Act any award, order, rule, regulation or decision is required or authorized to be made by the board or by a committee of arbitration the action of a majority of the members of such board or committee shall be

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considered as the action of such board or committee, respectively, as the case may be.

Definitions.

Section 60. In this Act, unless the context otherwise requires:

(a) "Employer" unless otherwise stated, includes any body of persons, corporate or unincorporated, public or private, and the legal representative of a deceased employer. It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor, or for any other reason, is not the direct employer of the workmen there employed. If the employer is insured it includes his insurer as far as applicable.

(b) "Workman" is used as synonymous with "employee," and means any person who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. It does not include a person whose employment is purely casual or not for the purpose of the employer's trade or business, or whose remuneration from any one employer, excluding pay for over-time, exceeds thirty-six dollars ($36.00) a week. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents as herein defined, if the context so requires, or, where the employee is a minor or incompetent, to his guardian or next friend.

(c) "Injury" or "personal injury" includes death resulting from injury within two years.

(d) The words "personal injury by accident arising out of and in the course of such employment" shall include an injury caused by the wilful act of a third person directed against an employee because of his employment.

They shall not include a disease except as it shall result from injury.

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(e) "Employment," in the case of private employers, includes employment only in a trade or occupation which is carried on by the employer for the sake of pecuniary gain.

Public employment means employment by the Territory, or by a county, or by any political subdivision of the Territory now existing or which may hereafter be created.

It does not include the employment of public officials who are elected by popular vote or who receive salaries exceeding eighteen hundred dollars ($1,800.00) a year.

(f) The word "board" or words "industrial accident board," whenever used in this Act, unless the context shows otherwise, shall be taken to mean the industrial accident board of the respective county.

(g) "Partial disability." Diminished ability to obtain employment owing to disfigurement resulting from an injury may be held to constitute partial disability.

(h) "Wages" shall include the market value of board, lodging, fuel, and other advantages which can be determined in money which the employee receives from the employer as a part of his remuneration.

"Wages" shall not include any sums which the employer has paid to the employee to cover any special expenses entailed on him by the nature of his employment.

(i) "Insurance carrier" shall include stock corporations or mutual associations from any of which employers have obtained workmen's compensation insurance or guaranty insurance in accordance with the provisions of this Act.

(j) The word "county" includes the City and County of Honolulu.

(k) Any term shall include the singular and plural and both sexes where the context so requires.

Unconstitutional Provisions.

Section 61. If any part or section of this Act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the Act as a whole, or any part thereof

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which can be given effect without the part so decided to be unconstitutional or invalid.

Penalties for False Representations.

Section 62. If for the purpose of obtaining any benefit or payment under the provisions of this Act, either for himself or for any other person, any one wilfully makes a false statement or representation, he shall be guilty of a misdemeanor and liable to a fine of not exceeding two hundred and fifty dollars ($250.00).

Prior Injuries.

Section 63. The provisions of this Act shall not apply to injuries sustained, or accidents which occur, prior to the taking effect hereof.

Rules of Construction.

Section 64. (a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(b) This Act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

Prior Statutes. Repeal.

Section 65. All Acts and parts of Acts inconsistent with this Act here hereby repealed.

Title of Act.

Section 66. This Act may be cited as the "Workmen's Compensation Act."

Time of Taking Effect.

Section 67. This Act shall take effect on the first day of July, 1915.

Approved this 28th day of April, A. D. 1915.

LUCIUS E. PINKHAM,
Governor of the Territory of Hawaii.

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